

# EXHIBIT R

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS

3 - - - - - X

4 UNITED STATES OF AMERICA, :

5 STATE OF ARIZONA, STATE OF :

6 CALIFORNIA, DISTRICT OF :

7 COLUMBIA, STATE OF FLORIDA, :

8 COMMONWEALTH OF :

9 MASSACHUSETTS, COMMONWEALTH :

10 OF PENNSYLVANIA and :

11 COMMONWEALTH OF VIRGINIA, :

12 Plaintiffs, : Case No.

13 v. : 1:21-cv-11558

14 AMERICAN AIRLINES GROUP INC., :

15 and JETBLUE AIRWAYS :

16 CORPORATION, :

17 Defendants. :

18 - - - - - X

19 HIGHLY CONFIDENTIAL

20 Remote Deposition

21 Tuesday, August 23, 2022

22

1 yes and no.

2 I mean, I understand you've got to do a  
3 statistical analysis, but putting that aside -- and  
4 that's how we do -- I'm not sure I understand what  
5 documents you're talking about that would answer that  
6 precise question unless someone did their own  
7 analysis, in which case I've not seen it.

8 If you have -- I'd be happy to look at it  
9 if you have it and tell you whether it affects my  
10 conclusions, but I'm not aware of anyone else doing  
11 the study I've done.

12 Q. If I could direct you back to your report  
13 to page 5. Page 5 and in particular to footnote 14.

14 A. Yes.

15 Q. Do you see where I'm at?

16 A. I see footnote 14, yes.

17 Q. Okay. In that footnote, you refer to the  
18 idea that looking at fares in the, quote, post-NEA  
19 implementation period may not be reliable indications  
20 of competitive effects because American and JetBlue  
21 may have agreed to postpone competitive actions  
22 during this litigation.

1                    Did I paraphrase your point correctly?

2            A.        Yes.

3            Q.        You say that there is no evidence of such  
4 an agreement?

5            A.        Yes.

6            Q.        What is your basis for that statement?

7            A.        Well, I've seen no evidence. They've not  
8 suggested they have evidence that there's an  
9 agreement. I'll defer to the lawyers, but I assume  
10 an agreement to behave in a way to enable -- to  
11 avoid -- to enact an agreement that is essentially,  
12 according to Dr. Miller, a price-fixing agreement, I  
13 assume that would be an antitrust violation. But I'm  
14 not aware that they're alleging that.

15                    However, I am aware that -- I believe  
16 Dr. -- either Dr. Miller or Dr. Town or maybe both do  
17 say something on this and I have thought about it.

18            Q.        What do you mean when you say you've  
19 thought about it?

20            A.        Well, I believe it's Dr. Miller says that  
21 the fact that there's a litigation going on, this  
22 litigation, means that AA and JetBlue are under

1 scrutiny and, because of that, they won't raise  
2 price. But the implication, I take it, from that is  
3 once they convince the Court to let the agreement go  
4 forward, they'll jack up price.

5 And, you know, my reaction to that is I  
6 understand the concern, but the fact that they're  
7 under scrutiny now doesn't mean they won't continue  
8 to be under scrutiny. The information on prices from  
9 DB1B is publicly available. That's why the airlines  
10 is one of the most studied markets in industrial  
11 organization.

12 I've set forth a methodology to tell you  
13 whether the overlap routes, the ones Dr. Miller is  
14 most concerned about, have their fares go up relative  
15 to control routes, control routes that in his own  
16 model he predicts shouldn't have an effect. It seems  
17 to me there would be continued scrutiny and it would  
18 be easy to have continued scrutiny and that if  
19 Dr. Miller is correct that -- and I'm paraphrasing  
20 him -- but he seems to say the agreement and its  
21 details are irrelevant because it's really just a  
22 subterfuge to allow two firms to get together and

1     conspire.

2                     If that in fact is true and he's using  
3     methodology to determine whether the overlap fares  
4     are going up relative to the control group, I would  
5     think that that continued scrutiny as well as the  
6     threat of antitrust actions and treble damages would  
7     continue.

8                     So I just don't understand why the data  
9     that exists aren't relevant for doing an analysis.  
10    And this is the same analysis. You could hire me  
11    next year and say, Dennis, has anything changed?  
12    Should I sue them? I mean, your economists have  
13    access to the same data. Every economist actually.  
14    It's publicly available data. So I just don't  
15    understand this issue that, oh, it's a subterfuge and  
16    it's going to be a trick if that's what they're  
17    suggesting. It just seems wrong.

18                    They also quote a Dr. Werden.  
19    Dr. Werden's article is in the context of a merger.  
20    I don't think this is a merger at all. I mean, this  
21    isn't a merger at all. But one important distinction  
22    between a merger and an agreement -- again, I'll

1 defer to the lawyers -- but if you have a merger, one  
2 of the economic concerns is -- whether it's a legal  
3 concern is what I'll defer to the lawyers -- one of  
4 the economic concerns is after a merger, the eggs are  
5 in a sense scrambled and it's hard to undo. But this  
6 is an agreement. It seems to me if it's an illegal  
7 price-fixing agreement, which is what I assume  
8 Dr. Miller is saying, you just say stop the agreement  
9 and pay treble damages.

10 So I just don't understand this claim that  
11 you should pay no attention to the data. It just  
12 seems to me against what economists are told to do,  
13 which is to use the available data to make the best  
14 inferences they can.

15 Q. Do you agree that as a general matter, if  
16 airline capacity goes up, then prices will go down  
17 all else equal?

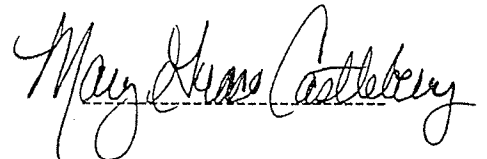
18 A. That all else equal, if airlines expand  
19 capacity, that price will fall? I think that's what  
20 you're saying. Yes, certainly -- I mean, there are  
21 all these complexities about a network and everything  
22 like that, but putting that aside. Generally, if

CERTIFICATE OF REPORTER

UNITED STATES OF AMERICA ) ss.:

STATE OF MARYLAND )

I, **MARY GRACE CASTLEBERRY**, RPR, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties for the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

A handwritten signature in cursive script, reading "Mary Grace Castleberry". The signature is written in dark ink and is positioned above the printed text of the notary's title.

*Notary Public in and for*

*the State of Maryland*